

and 17 new exhibits, for the June 26, 2024 evidentiary hearing. This new witness – for whom no information or designation is provided – and these 17 new exhibits, totaling 117 pages, are grossly unfair and would severely prejudice BCB and its counsel if the Court were to allow this new witness to testify and any of these new exhibits to be used at the Wednesday evidentiary hearing. In support of this motion to strike, BCB respectfully shows the Court as follows:

1. On June 13, 2024, the Court set an evidentiary hearing for June 26, 2024 at 1:30 p.m. [ECF 217].

2. The Court was very clear with what it required for the Parties' witness and exhibit lists in advance of the ½-day evidentiary hearing:

IT IS FURTHER ORDERED that the parties shall exchange and file anticipated witness lists no later than June 19, 2024.

IT IS FURTHER ORDERED that the parties shall exchange and file anticipated exhibits no later than June 19, 2024.

3. Plaintiff complied with the Court's 6/13/24 Order. Plaintiff filed-and-served its comprehensive designation of hearing witnesses on June 19, 2024, including summary descriptions of what Michael Murphy and CFIUS expert Andrew Astuno would testify about. BCB even included all of the PowerPoint slides prepared by Mr. Astuno [ECF 225-1, pp. 2-14].

4. The MineOne Defendants did not file their list of witnesses and exhibits on June 19, 2024, but they did e-mail their 29 hearing exhibits to Plaintiffs' counsel on June 19, 2024, and they filed their designation the next day. They did not designate Ed Deignan with their 6/19/24 and 6/20/24 disclosures. And they did not mention or attach anything beyond MineOne Exhibit 30.

5. June 20 came and went. June 21 came and went. On Friday afternoon, June 21, after considering the Parties' e-mail requests that day, the Court entered its text Order [ECF 234]

ruling that the Parties would each have 90 minutes to present all of their evidence, including any cross-examination time. The Court did not grant leave to anyone to supplement their witness and exhibit lists; indeed, no one *asked* to supplement their witness or exhibit lists.

6. Then, on Saturday night, June 22 at 7:26 p.m., when MineOne’s counsel knew BCB’s counsel was in Cheyenne visiting his family, Alex Inman emailed all counsel with the following message:

Counsel:

Attached are supplemental exhibits that the MineOne Defendants are designating for the Evidentiary Hearing. The MineOne Defendants are also designating an additional witness: Ed Deignan. An amended exhibit/witness list will be filed with the Court on Monday.

See “**Exhibit A.**”

7. MineOne provided no description of these 16 new exhibits; no reason for why MineOne was dumping these 16 new exhibits on BCB less than four (4) days before the evidentiary hearing; no reason why MineOne did not disclose and exchange these 16 new exhibits on the 6/29/24 exchange deadline; *and nothing about “Ed Deignan” except for his name.*

8. Less than 20 minutes later, Patrick Murphy replied to Alex Inman’s 7:26 p.m. e-mail objecting to MineOne’s “new” witness, Ed Deignan, and all 16 “new” exhibits. *Id.* Mr. Murphy wrote to Mr. Inman, saying:

Alex:

BCB wholly objects to the MineOne Defendants trying to designate supplemental exhibits and a supplemental witness for the June 26 evidentiary hearing.

On June 13, 2024, Judge Johnson issued the Court’s Order saying, “the parties *shall* exchange and file anticipated witness lists *no later than* June 19, 2024.” And Judge Johnson also ruled that “the parties *shall* exchange and file anticipated exhibits *no later than* June 24, 2024.”

Then, on June 21, you asked the Court to limit the parties to only two hours of presentation time each. And, later than day, Judge Johnson limited the parties to ninety (90) minutes of evidence presentation, even though BCB needs – and requested – 3.25 hours to present its evidence.

Yet now the MineOne Defendants seek to add another witness (which it has long known about) and exhibits (which have been available to MineOne) *on the weekend before the hearing*. That is patently unfair and prejudicial to BCB. I reserve all of BCB's additional objections to this untimely disclosure after I have the chance – if I can even find the time in the next three days – to look at the *new exhibits* and consider the new witness you are first disclosing at 7:30 pm on Saturday night, June 22.

Pat Murphy
Counsel for Plaintiff BCB Cheyenne LLC

9. Patrick Murphy Googled “Edward Deignan” on Sunday, June 23, 2024. Mr. Murphy learned that Mr. Deignan is a Brooklyn, New York real estate lawyer.

10. It seems that MineOne seeks to call Ed Deignan as a witness to rebut whatever BCB's CFIUS' expert, Andrew Astuno, is going to testify to at the evidentiary hearing. But MineOne refuses to tell BCB why it is calling Mr. Deignan, what Mr. Deignan proposes to testify to, or anything about Mr. Deignan or his proposed testimony. Mr. Deignan has never been disclosed as a potential witness in this case or for this evidentiary hearing (until June 22). No CV is provided. No list of the documents Mr. Deignan has reviewed. No opinions. No bases for his opinions. Just his name, “Ed Deignan.”

11. Ed Diegnan is not a “rebuttal witness.” He is a witness MineOne anticipated, or should have anticipated, calling to testify at the June 26th hearing. MineOne knew it was alleging that BCB's [alleged] failure to notify CFIUS, back in 2022, was an [alleged] breach of contract by BCB, as of May 17, 2024.

12. MineOne knew weeks ahead of the June 26 evidentiary hearing, that it could defeat

BCB's *Emergency Motion* and *Amended Emergency Motion* by showing that it, MineOne – not BCB – has a substantial likelihood of defeating BCB's *First Amended Complaint* on the merits. Consequently, MineOne anticipated, or should have anticipated, that Edward Deignan could testify about CFIUS. Edward Deignan is no “rebuttal witness.” Instead, he is an anticipated and known person who MineOne should have listed on its June 19th Witness *Disclosure* if, indeed, MineOne wanted to call him at the evidentiary hearing.

13. But this is all that MineOne's counsel offers in her conferral reply about Ed Deignan:

Pat: We are disclosing the witness as a courtesy to you. Based on your designated witnesses and exhibits, we anticipate calling him as a rebuttal witness, which we do not need to disclose to you, but again we are doing so as a courtesy to you.

See “**Exhibit A.**”

14. Contrary to what MineOne's counsel says, she did need to disclose Mr. Deignan to BCB on her June 19 Witness List. She chose not to do that; BCB and its counsel are severely prejudiced; and the Court should strike Ed Deignan as a witness at the evidentiary hearing tomorrow. The Court's June 13 Order was clear: all witnesses for the evidentiary hearing had to be listed and disclosed by June 19, 2024.

15. MineOne's effort to list sixteen (16) new exhibits three days after the June 19 designation-and-exchange deadline is also unfair and prejudicial to BCB. BCB and its counsel cannot fairly be expected to wade through sixteen (16) more exhibits, and meaningfully prepare for those exhibits, less than four days before the biggest and most important evidentiary hearing this lawyer has ever had (or even heard of).

16. MineOne offers no rationale, no reason, and no excuse for not listing-and-exchanging these 16 new exhibits on the June 19 exhibit deadline. All of these 16 new exhibits

should have been filed at the same time MineOne filed its original 29 exhibits.

17. This belated designation is hurting BCB and hurting BCB's counsel. Precious time that BCB and its counsel need to study MineOne's original 29 exhibits and prepare witness examinations is now being diverted to attend to these 17 new exhibits and writing this Motion to Strike. This should not have had to happen.

18. All of these new 17 exhibits are three days late in a tight and jammed-packed seven-day window. The Court should strike all of MineOne's 16, now 17, new evidentiary hearing exhibits.

19. A [proposed] order granting this *Motion to Strike* is attached for the Court's consideration.

WHEREFORE, because MineOne anticipated, or should have anticipated, calling Ed Deignan and using these 17 new exhibits at the evidentiary hearing, and because of the severe prejudice it would cause (and already is causing) BCB and its counsel to allow MineOne to late-list Ed Deignan (with no designation of his proposed testimony or area of expertise and knowledge), BCB respectfully asks the Court to strike Ed Deignan as a witness and strike all of MineOne's seventeen (17) "new" (and late-listed) hearing exhibits.

DATED this 25th day of June, 2024.

BCB CHEYENNE LLC d/b/a
BISON BLOCKCHAIN, Plaintiff

By: /s/ Patrick J. Murphy
Patrick J. Murphy (WSB No. 5-1779)
Scott C. Murray (WSB No. 7-4896)
Williams, Porter, Day & Neville, PC
159 N Wolcott St. Suite 400
Casper, WY 82601
Ph: (307) 265-0700
pmurphy@wpdn.net
smurray@wpdn.net

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was delivered to the Court via the CM/ECF System and served upon counsel via CM/ECF electronic transmission this 25th day of June, 2024.

Sean M. Larson, WSB No. 7-5112	<input type="checkbox"/>]	U. S. Mail (prepaid)
Kari Hartman, WSB No. 8-6507 HATHAWAY & KUNZ, LLP	<input checked="" type="checkbox"/>]	CM/ECF Electronic Transmission
P.O. Box 1208	<input type="checkbox"/>]	Overnight Delivery
Cheyenne, WY 82001	<input type="checkbox"/>]	Hand Delivery
slarson@hkwyolaw.com	<input type="checkbox"/>]	Electronic Mail
khartman@hkwyolaw.com		

Paula Colbath, <i>Pro Hac Vice</i>	<input type="checkbox"/>]	U. S. Mail (prepaid)
Sarah Levitan Perry, <i>Pro Hac Vice</i>	<input checked="" type="checkbox"/>]	CM/ECF Electronic Transmission
Alex Inman, <i>Pro Hac Vice</i>	<input type="checkbox"/>]	Overnight Delivery
Leily Lashkari, <i>Pro Hac Vice</i>	<input type="checkbox"/>]	Hand Delivery
David Forrest, <i>Pro Hac Vice</i>	<input type="checkbox"/>]	Electronic Mail
LOEB & LOEB LLP		
345 Park Avenue New York, NY 10154		
pcolbath@loeb.com		
sperry@loeb.com		
ainman@loeb.com		
llashkari@loeb.com		
dforrest@loeb.com		

Marc Feinstein, <i>Pro Hac Vice</i>	<input type="checkbox"/>]	U. S. Mail (prepaid)
William Pao, <i>Pro Hac Vice</i>	<input checked="" type="checkbox"/>]	CM/ECF Electronic Transmission
Daniel Hirsch, <i>Pro Hac Vice</i>	<input type="checkbox"/>]	Overnight Delivery
David Iden, <i>Pro Hac Vice</i>	<input type="checkbox"/>]	Hand Delivery
Sherin Parikh, <i>Pro Hac Vice</i>	<input type="checkbox"/>]	Electronic Mail
O'MELVENY & MYERS		
400 South Hope Street		
Los Angeles, CA 90071-2899		
mfeinstein@omm.com		
wpao@omm.com		
dhirsch@omm.com		
diden@omm.com		
sparikh@omm.com		

Khale J. Lenhart, WSB No. 7-4581
 Tyson R. Woodford, WSB No. 8-6650
 HIRST APPLGATE LLP
 1720 Carey Ave. Room 400
 P.O. BOX 1083
 Cheyenne, WY 82003
klenhart@hirstapplegate.com
twoodford@hirstapplegate.com

☐ U. S. Mail (prepaid)
☒ CM/ECF Electronic Transmission
☐ Overnight Delivery
☐ Hand Delivery
☐ Electronic Mail

Meggan J. Hathaway
 Jane M. France
 SUNDAHL, POWERS, KAPP & MARTIN, LLC
 500 W. 18th Street, Ste. 200
 Cheyenne, WY 82003
mhathaway@spkm.org
jfrance@spkm.org

☐ U. S. Mail (prepaid)
☒ CM/ECF Electronic Transmission
☐ Overnight Delivery
☐ Hand Delivery
☐ Electronic Mail

Marc S. Gottlieb
 ORTOLI ROSENSTADT, LLP.
 366 Madison Avenue, 3rd Floor
 New York, NY 10017
 Telephone: (212) 588-0022
 Facsimile: (866) 294-0074
 Email: msg@orllp.legal

☐ U. S. Mail (prepaid)
☒ CM/ECF Electronic Transmission
☐ Overnight Delivery
☐ Hand Delivery
☐ Electronic Mail

/s/ Patrick J. Murphy
 Patrick J. Murphy